



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: February 5, 2014

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary *Ben Brancel*
Sandy Chalmers, Administrator, Division of Trade & Consumer Protection *Sandy Chalmers*

**SUBJECT: Amending ch. ATCP 104, Leaf Tobacco Buying and Selling;
Rulemaking Scope Statement**

TO BE PRESENTED BY: Jeremy McPherson

REQUESTED ACTION:

At the February 19, 2014 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve a "Statement of Scope" (copy attached) for the proposed repeal of current DATCP rules related to leaf tobacco buying and selling practices.

A scope statement spells out the general purpose and scope of a proposed rule. DATCP may not begin drafting a proposed rule (including a proposal to amend or repeal an existing rule) until the Governor approves a scope statement for the proposed rule and the DATCP Board approves the scope statement. In accordance with 2011 Wisconsin Act 21 (s.227.135(2), Stats.), the Governor approved this scope statement for permanent rule changes on January 14, 2014 thereby allowing DATCP to submit this scope statement for publication and to seek approval of the scope statement by the DATCP Board.

DATCP must publish a draft scope statement in the Wisconsin Administrative Register, and file a copy with the Department of Administration (DOA), at least 10 days before the Board approves the scope statement. DATCP filed the attached statement of scope with the Legislative Reference Bureau for publication in the October 15, 2011 issue of the Wisconsin Administrative Register. DATCP also filed a copy with DOA.

If the Board approves the scope statement, the Department will begin work to draft the permanent rule. Approval of a scope statement is just the first, preliminary step in a lengthy process for enacting permanent rules. The Board will have at least two further opportunities to review the proposed rule. The Board must approve a hearing draft rule before DATCP may hold public hearings on the rule proposal. The Board must also approve the final draft rule before DATCP may adopt the rule. The permanent rule will be effective when the final draft has been approved by the DATCP Board, approved by the Governor, completed the legislative review process and adopted by the Secretary.

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STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection (DATCP)

Rule No.: Ch. ATCP 104, Wis. Adm. Code (Existing)

Relating to: Leaf Tobacco, Buying and Selling

1. Description of the objective of the rule:

DATCP is proposing to repeal Chapter ATCP 104, which regulates transactions between tobacco growers and the buyers who purchase their product.

2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

Ch. ATCP 104 prohibits leaf tobacco buyers from engaging in certain practices:

- Attempting to induce another tobacco buyer to engage in specific activities that would artificially manipulate the market price for tobacco.
- Refusing to negotiate with any grower for the purchase of tobacco because such tobacco was previously graded or submitted for grade.
- Falsely representing in negotiations with a grower that any particular lot or crop of tobacco was purchased at less than the price actually paid, or that another tobacco buyer has or will cease buying tobacco.
- Purchasing tobacco under any contract which does not include a specific time within which delivery and payment are to be made.
- Giving or offering to give any grower any secret or separately stated bonus, commission, payment or other consideration.

Chapter ATCP 104 also prohibits tobacco growers or sellers from soliciting or receiving any secret or separately stated bonus, commission, payment or other consideration.

This rule was initially promulgated in the 1950s when tobacco farming was a prominent business in Wisconsin, and much of the crop was sold in cash markets at the conclusion of the growing season. This rule was necessary to ensure fair transactions between growers and buyers.

Today, the crop is generally produced and sold under contract (as opposed to a cash market at the end of the season). This means that ch. ATCP 104, as it is currently written, is not relevant to the current industry.

Proposed Policies.

- DATCP proposes to repeal ch. ATCP 104 in its entirety. This will allow for a simplification of the overall administrative code.
- Alternatively, if the public hearing process reveals that the rule does or could play an important role in the tobacco growing industry, DATCP may consider either of the following:
 - Maintain the rule in its current form.
 - Modify the rule to bring it into alignment with current tobacco leaf buying and selling practices.

Policy Alternatives.

- Do nothing.

3. Statutory authority for the rule (including the statutory citation and language):

Sections 93.07 (1) and 100.20(2)(a), Stats.

Section 93.07 Department duties. It shall be the duty of the department:

(1) REGULATIONS. To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law.

Section 100.20 (2)(a).

The department, after public hearing, may issue general orders forbidding methods of competition in business or trade practices in business which are determined by the department to be unfair. The department, after public hearing, may issue general orders prescribing methods of competition in business or trade practices in business which are determined by the department to be fair.

4. Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

DATCP estimates that it will use approximately 0.15 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

5. Description of all entities that may be impacted by the rule:

DATCP's initial analysis shows that the existing rule is obsolete. Therefore, the proposed repeal of the rule will have no impact on any entities.

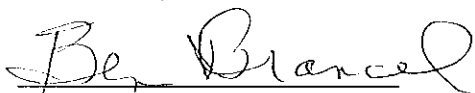
6. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:

There are a number of federal regulations that relate, generally, to the tobacco industry. For example, the IRS enforces regulations that control the manufacture and distribution of tobacco products. Further, the 2010 Family Smoking Prevention and Tobacco Control Act grants FDA authority to write rules that may require growers and brokers to disclose certain information to manufactures about the type of tobacco, levels of certain chemicals, and curing methods used. However, our search does not reveal any federal law or regulation that regulates the transaction between tobacco growers and buyers comparable to ch. ATCP 104.

7. Anticipated economic impact

DATCP expects the proposed rule to have no economic impact locally or statewide.

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Ben Brancel

Secretary

Department of Agriculture, Trade and Consumer Protection

1-3-14

Date